

HOUSE BILL 1823
By Kent

AN ACT to amend Tennessee Code Annotated, Title 37; Title 38, Chapter 6; and Title 39, Chapter 13, to create the Criminal Gang Activity Act of 1997.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13 is amended by adding the following as a new part:

(a) The General Assembly of the State of Tennessee hereby finds and declares that it is the right of every person, regardless of race, color, creed, religion, national origin, sex, age or handicap, to be secure and protected from fear, intimidation, and physical harm caused by the activities of groups engaging in random crimes of violence, and committing crimes for profit and violent crimes committed to protect or control market areas or "turf." It is not the intent of this subchapter to interfere with the constitutional exercise of the protected rights and freedoms of expression and association. The General Assembly of the State of Tennessee hereby recognizes the right of every citizen to harbor and constitutionally express beliefs on any subject whatsoever, to associate lawfully with others who share similar beliefs, to petition lawfully constituted authority for a redress of perceived grievances, and to participate in the electoral process.

(b) The General Assembly of the State of Tennessee further finds that the State of Tennessee is experiencing an increase in crime committed by criminal gangs. These

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criminal gangs support themselves by engaging in criminal activity for profit, most commonly through the distribution of controlled substances and theft of property. These criminal gangs are becoming increasingly sophisticated at avoiding arrest and prosecution. With increasing frequency, criminals are using the property of another person which has been stolen, borrowed, leased, or just maintained in another person's name to avoid detection and identification. This is particularly common among members and associates of criminal gangs. There is strong evidence that this increased sophistication is due largely to contact with other criminal gangs from other states.

(c) The General Assembly of the State of Tennessee further finds that criminal gangs control their market areas by terrorizing the citizens in their neighborhoods with deliberate and random acts of violence. "Drive-by" shootings are becoming all too common in many Tennessee cities. One of the primary reasons for the increased homicide rate is the use of firearms by criminal gangs to control the narcotics market within their geographical "turf."

(d) It is the intent of the General Assembly of the State of Tennessee to use as a model the federal continuing criminal enterprise statute, 21 U.S.C. 848. This should provide law enforcement officers, prosecutors, and our courts with ample case law to guide in the interpretation of the language and the legislative intent. It is furthermore the intent of the General Assembly to focus the state's law enforcement agencies and prosecutors on investigating and prosecuting all ongoing organized criminal activity and to provide for penalties that will punish and deter organized ongoing activity.

SECTION 2. Definitions

(a) "Criminal gang activity" is defined as a continuing series of two (2) or more predicate criminal offenses which are undertaken in concert with each other by any group of three (3) or more individuals.

(b) "Predicate criminal offense" means any violation of Tennessee law which is a crime of violence or pecuniary gain.

(c) "Crime of violence" means any violation of Tennessee law where a person purposely or knowingly causes, or threatens to cause, death or physical injury to another person or persons, specifically including rape.

(d) "Crime of pecuniary gain" means any violation of Tennessee law that results, or was intended to result, in the defendant receiving income, benefit, property, money, or anything of value.

SECTION 3. Criminal gang activity.

(a)(1) A person commits the offense of aggravated criminal gang activity if he:

(A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense; and

(B) That offense is part of a continuing series of two (2) or more predicate criminal offenses which are undertaken by that person in concert with two (2) or more other persons who are members of a criminal gang with respect to whom that person occupies a position of organizer, a supervisory position or any other position of management within the criminal gang.

(2) A person who commits the offense of aggravated criminal gang activity is guilty of a felony two (2) classifications higher than the classification of the highest underlying predicate offense referenced in subdivision (a)(1)(A) of this section.

(b)(1) A person commits the offense of criminal gang activity if he:

(A) Commits or attempts to commit or solicits to commit a felony predicate criminal offense, and

(B) That offense is part of a continuing series of two (2) or more predicate criminal offenses which are undertaken by that person in concert with two (2) or more other persons who are members of a criminal gang, but with respect to whom that person does not occupy the position of organizer, a supervisory position, or any other position of management within the criminal gang.

(2) A person who commits the offense of criminal gang activity is guilty of a felony one (1) classification higher than the classification of the highest underlying offense referenced in subdivision (b)(1)(A) of this section.

(c) A person who commits the offenses of criminal gang activity or aggravated criminal gang activity where the underlying predicate offense is a Class A or Class B felony shall be guilty of a Class A felony.

(d) Any sentence of imprisonment imposed pursuant to this section shall be in addition to any sentence imposed for the violation of a predicate criminal offense.

SECTION 4. Unauthorized use of another person's property to facilitate certain crimes.

(a)(1) A person commits the offense of unauthorized use of another person's property to facilitate a crime when he knowingly uses the property of another person to facilitate in any way the violation of a predicate criminal offense without the owner's knowledge.

(2) A violation of this section is a Class E. Felony.

(3) Any sentence under this section must be served consecutively with any sentence for the underlying predicate criminal offense.

(b) The State of Tennessee is the victim in any violation of this section.

SECTION 5. Simultaneous possession of drugs and firearms or deadly weapons.

(a) No person shall unlawfully commit a felony violation of T.C.A. section 39-17-417 or unlawfully attempt, solicit, or conspire to commit a felony violation of T.C.A. section 39-17-417 while in possession of:

(1) A firearm as defined in T.C.A. section 39-11-106(11) or

(2) Any prohibited weapon under T.C.A. section 39-17-1302.

(b) Any person who violates this section is guilty of a Class D felony.

(c) Any sentence under this section must be served consecutively with any sentence for the underlying drug offense. No person convicted under this section shall be eligible for pre-trial diversion, judicial diversion, suspension of sentence, probation, or sentencing under the Tennessee Community Corrections Act, T.C.A. Sections 40-36-101, et seq.

SECTION 6. Unlawful discharge of a firearm from a vehicle.

(a)(1) A person commits aggravated unlawful discharge of a firearm from a vehicle if he knowingly discharges a firearm from a vehicle and thereby causes death or serious bodily injury to another person.

(2) Any person who is guilty of aggravated unlawful discharge of a firearm from a vehicle under this subsection commits a Class A felony.

(b)(1) A person commits unlawful discharge of a firearm from a vehicle if he recklessly discharges a firearm from a vehicle in a manner that creates a substantial risk of physical injury to another person or property damage to a habitation.

(2) Any person who is guilty of unlawful discharge of a firearm from a vehicle under this subsection commits a Class B felony.

(c)(1) Any vehicle used by the owner, or anyone acting with the knowledge and consent of the owner, to facilitate a violation of this section shall upon conviction be forfeited.

(2) Property which is forfeitable based on this section shall be forfeited pursuant to and in accordance with the procedures for forfeiture in T.C.A. section 39-11-116.

SECTION 7. Soliciting or recruiting a minor to join or to remain a member of a criminal gang.

(a) Every person who by intimidation or duress causes, aids, abets, encourages, solicits, or recruits a minor to become or to remain a member of any group which he knows to be a criminal gang as defined in this chapter is guilty of a Class D felony.

(b) Every person who is found guilty of or who pleads guilty or nolo contendere to, a second or subsequent violation of this section is guilty of a Class C felony.

SECTION 8. Engaging in violent criminal group activity.

(a) A crime of violence committed while acting in concert with two (2) or more other persons shall be classified one classification higher than if it were committed alone. A Class A felony committed while acting in concert with two (2) or more other persons shall be classified as a Class A felony, however, the presumptive sentence shall be the maximum within the range if there are no enhancement or mitigating factors.

(b) The fact that the group was not a criminal gang is not a defense to prosecution under this statute.

SECTION 9. Tennessee Code Annotated, Title 39, Chapter 13, Section 204 is amended by adding the following new part:

(14) The murder was committed while acting in concert with two (2) or more other persons.

SECTION 10. If any provision of this act or the application thereof to any person or circumstances held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect July 1, 1997, the public welfare requiring it.